

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CINSEREE JOHNSON,

Plaintiff,

v.

TERRANCE KENNEALLY,

Defendant.

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CASE NO. 1: 09 CV 992

JUDGE DONALD C. NUGENT

ORDER

This matter is before the Court upon Plaintiff Cinseree Johnson's Motion to Vacate the Dismissal. (ECF # 7.) Plaintiff's Motion is alleged to be brought on the grounds of newly discovered evidence. (*Id.*) In its previous Memorandum Opinion and Order, this Court found that this action lacked an arguable basis in law, given that no facts set forth in the Complaint suggested a proper basis for jurisdiction. (ECF # 4.) Because the fact remains that the parties are both in Ohio and no federal statute is implicated by Plaintiff's claim, this action remains appropriately subject to dismissal pursuant to 28 U.S.C. § 1915(e). Plaintiff's equal protection and due process claims simply cannot proceed where, as here, there exists no indication that Defendant acted under the color of state law. Based upon the foregoing, Plaintiff's Motion is DENIED. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: _____